

HOUSE BILL REPORT

HB 2324

As Reported by House Committee On:
Local Government

Title: An act relating to density bonus incentives to provide affordable housing.

Brief Description: Providing incentives to encourage affordable housing.

Sponsors: Representatives Holmquist, Simpson, B. Sullivan, Tom, O'Brien, Springer, McCune, Sells, Pettigrew, Ahern, DeBolt, Jarrett, Miloscia, Ormsby, Dunn, Priest, Roach, Dunshee, Woods, Upthegrove, Hunter and Ericks.

Brief History:

Committee Activity:

Local Government: 1/12/06, 2/1/06 [DP].

Brief Summary of Bill

- Requires jurisdictions fully planning under the Growth Management Act to adopt authorizations for density bonus incentives for affordable housing.
- Specifies that a local government legislative authority may only adopt or amend ordinances authorizing density bonus incentives after adopting or amending its housing element to include a policy for such incentives.
- Includes mandatory and optional provisions for affordable housing density bonus incentive ordinances.
- Specifies mandatory development agreement provisions pertaining density bonus incentives.
- Requires the Department of Community, Trade, and Economic Development to prepare and distribute a model affordable housing density bonus incentives ordinance to affected jurisdictions.
- Includes applicable definitions.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 5 members: Representatives Simpson, Chair; Ahern, Assistant Ranking Minority Member; B. Sullivan, Takko and Woods.

Minority Report: Do not pass. Signed by 2 members: Representatives Clibborn, Vice Chair and Schindler, Ranking Minority Member.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act

Enacted in 1990 and 1991, the Growth Management Act (GMA) establishes a comprehensive land use planning framework for county and city governments in Washington. The GMA specifies numerous provisions for jurisdictions fully planning under the Act (planning jurisdictions) and establishes a reduced number of compliance requirements for all local governments. The Department of Community, Trade, and Economic Development (DCTED) is charged with providing technical and financial assistance to jurisdictions implementing the GMA.

Among other requirements, planning jurisdictions must adopt internally consistent comprehensive land use plans, which are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must satisfy requirements for specified "elements," including a housing element, each of which is a subset of a comprehensive plan. Planning jurisdictions must also adopt development regulations that are consistent with and implement the comprehensive plan.

The housing element of a comprehensive plan must ensure the vitality and character of established residential neighborhoods and must include a statement of goals, policies, and provisions for the preservation, improvement, and development of housing. The housing element must also include data collection and analysis provisions. Housing elements must contain an identification of sufficient land for housing, including government-assisted housing and housing for low-income families, and an inventory and analysis of existing and projected housing needs. A jurisdiction's housing element must also include provisions for existing and projected housing needs for all economic segments of the community.

The GMA mandates planning requirements relating to the use or development of land in urban and rural areas. Among other obligations, counties that comply with the major requirements of the GMA (GMA counties) must designate urban growth areas (UGAs) or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. "Urban growth" is defined by the GMA, in part, as a reference to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for specified agricultural, mineral resource, and rural purposes.

The GMA includes many requirements pertaining to UGAs that counties and cities must satisfy. Using population projections made by the Office of Financial Management, GMA counties and each city within these counties must include within UGAs areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding 20-year period. The UGAs must permit urban densities and include greenbelts and

open space areas. The UGA determinations may include a reasonable land market supply factor and must permit a range of urban densities and uses.

Although the GMA includes provisions pertaining to density and the reduction of sprawling low-density development, neither "density" nor "residential density" is defined in the Act. The DCTED defined "residential density" in its September 2004, guidance paper, *Urban Densities - Central Puget Sound Edition*, as, in part, the number of dwelling units over a specified land area.

Development Agreements

A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. In limited circumstances, a city may enter into a development agreement for real property outside its boundaries. The development agreement must set forth development standards and other provisions that apply to and govern the development of the real property for the duration specified in the agreement. The agreement must be consistent with applicable development regulations adopted under the GMA.

Summary of Bill:

Density Bonus Incentives

Jurisdictions fully planning under the GMA must, by ordinance, adopt or amend their development regulations, zoning regulations, or other official controls to include an authorization for density bonus incentives (incentives) for the provision of affordable housing. These incentives must apply to UGAs and must satisfy specified criteria. Jurisdictions not fully planning under the GMA may adopt ordinances authorizing incentives. The authorizing ordinances may only be adopted after the applicable legislative body has adopted or amended its comprehensive plan housing element to include specific density bonus incentives provisions.

"Density bonus" is defined as the percentage of density increase granted over the otherwise maximum allowable net density under the applicable development regulations, as of the incentive application date. The density bonus must be at least a 25 percent increase and must apply to the site of the affordable housing development.

Affordable housing density bonus incentive ordinances (incentive ordinances) must satisfy specific minimum requirements and must, in part, include:

- a statement of purpose;
- a statement of consistency;
- operational procedures; and
- enforcement provisions.

Additionally, the incentive ordinances must require that project applicants seeking incentives enter into qualifying development agreements.

Incentive ordinances may require that any new housing development within the jurisdiction of the ordinance contain at least 20 percent affordable housing if the requirement is consistent with policy in the jurisdiction's comprehensive plan, and the incentive meets an equivalent financial value requirement.

The granting of an incentive must constitute a development permit. The review and decision procedures for an application for an incentives permit must be included in the local project review process of the local government.

Development Agreements

Development agreements between an applicant seeking an incentive and the applicable local government must include provisions to ensure the availability of the affordable housing units. The agreements must provide for five to 15 year periods of affordable housing availability in compliance with affordability control requirements that vary according to housing type and occupant characteristics.

Development agreements applicable to housing units for sale must include specific affordability controls governing the initial sale and use and any resale. These controls include provisions requiring that:

- conveyances of newly constructed affordable housing units that are for sale and subject to an incentive ordinance contain a deed restriction and mortgage lien;
- affordable housing units, upon initial sale and during the duration of the development agreement, be sold to eligible moderate-income and low-income households at an affordable sales price and housing cost; and
- affordable housing units be occupied by moderate-income or low-income households during the duration of the agreement.

Development agreement provisions for rental housing units must include affordability controls governing the housing units during a use restriction period. The provisions must include:

- specific rules and procedures for qualifying tenants;
- requirements pertaining to owner-verification of tenant incomes; and
- mandates obligating owners to submit annual compliance reports to the applicable local government.

Model Ordinance

The DCTED must prepare a model incentives ordinance satisfying specified requirements. The agency must distribute the model ordinance to affected local governments within one year of the effective date of the act. Additionally, the DCTED may also prepare and distribute related guidelines to assist local governments in complying with the act.

Definitions

Definitions pertaining to affordable housing density bonuses are specified. Examples include:

- "Affordable housing" means housing that has a sales price or rental amount that is within the means of a household that may occupy moderate-income or low-income

housing. In the case of dwelling units for sale, affordable housing means housing in which annual housing costs do not exceed 30 percent of such gross annual household income for a household of the size that may occupy the particular unit. In the case of dwelling units for rent, affordable housing means housing for which the affordable rent does not exceed 30 percent of such gross annual household income for a household of the size that may occupy the particular unit;

- "Affordable housing development" means any housing development that is subsidized by the federal, state, or local government, or any housing development in which at least 20 percent of the dwelling units are subject to covenants or restrictions that require such dwelling units to be sold or rented at prices that ensure the units remain as affordable housing;
- "Affordable housing density bonus incentive" means a density bonus incentive granted to an applicant for an affordable housing development under an ordinance required by the act;
- "Low-income housing" means housing that is affordable, according to standards of the United States Department of Housing and Urban Development (HUD), for either ownership or rental and that is occupied, reserved, or marketed for occupancy by households with a gross household income that does not exceed 80 percent of the median gross household income for households of the same size within the county in which the housing is located; and
- "Moderate-income housing" means housing that is affordable, according to standards of the HUD, for either ownership or rental and that is occupied, reserved, or marketed for occupancy by households with a gross household income that is greater than 80 percent, but not in excess of 120 percent of the median gross household income for households, of the same size within the county in which the housing is located.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) This legislation represents another tool that will help local governments to provide affordable housing opportunities while complying with the GMA. The GMA mandates higher densities in urban growth areas: areas where land costs are increasing. Density bonus incentives may help local governments to offset development costs. This bill is not intended to provide inclusionary zoning provisions, and support exists for removing language pertaining to percentages of affordable housing within qualifying new developments. Housing supplies have decreased and this has forced long-term residents out of communities. Jurisdictions that plan under the GMA need this legislation to increase the

supply of affordable housing for working-class people and to diversify neighborhoods. This bill will give jurisdictions additional flexibility to accommodate density.

(With concerns) A separate bill being considered this year will authorize much of what is included within this legislation. The prescriptive provisions of the bill cannot be supported: decision authority should be retained at the local level. Many communities may not have a need for this legislation. The concepts of inclusionary zoning and local decision-making should be supported. Although recognition exists of a growing crisis of housing affordability, alternative legislative proposals should be supported. The limited duration of the price controls specified within the bill should be opposed.

Testimony Against: The inclusionary zoning provisions are of concern, and their removal would be supported. Low-income housing that is price controlled will not experience the benefits of increased value that comparable non price-controlled units will.

Persons Testifying: (In support) Representative Holmquist, prime sponsor; Terri Jeffreys, Olympic Peninsula Realtors; Kevin Grossman, Housing Partnership; and Bryan Wahl, Washington Realtors.

(With Concerns) Eric Johnson, Washington Association of Counties; Dave Williams, Association of Washington Cities; and Nick Federici, Washington Low Income Housing Alliance.

(Opposed) Timothy Harris, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: None.